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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/974,777

10/09/2001

Max Schaldach

7040-45

6887

21324

7590

02/11/2004

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EXAMINER

THALER, MICHAEL H

ART UNIT

PAPER NUMBER

3731

DATE MAILED: 02/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicati n No.

09/974,777

Applicant(s)

SCHALDACH ET AL.

Examiner

Michael Thaler

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3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 January 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2 and 5-66 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 5-66 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on Jan. 22, 2004 has been entered.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the catheter defined in claim 66 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claims 1, 2 and 5-66 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, it is unclear what difference there is, if any, between the bar

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elements (e.g. line 5) and the bar element portions (e.g. line 8). Other claims have this problem.

Claims 1, 2, 5-7, 11-30, 47, 48 and 66 are rejected under 35 U.S.C. 102(e) as being anticipated by von Open (6,193,747) for the reasons set forth in paragraph 4 of the Office Action mailed Feb. 12, 2003. In addition, as to the limitation in claim 1, line 13, the bar element portions of von Open are considered to be only the portions of the bar elements which are adjacent to the point where they meet to form the claimed V-shape. These portions are curved uniformly over an entire length thereof as broadly claimed.

Claims 1, 2 and 5-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Globerman (5,776,161) for the reasons set forth in paragraph 5 of the Office Action mailed Feb. 12, 2003.

Claims 31-46 and 49-65 are rejected under 35 U.S.C. 103(a) as being unpatentable over von Oepen (6,193,747) in view of Kveen et al. (6,261,319) for the reasons set forth in paragraph 6 of the Office Action mailed Feb. 12, 2003.

Applicant's arguments filed Jan. 22, 2004 have been fully considered but they are not persuasive. The allegation that the bar element portions of von Oepen are not "arranged in a V-shape" as claimed is incorrect. The bar element portions of von Oepen converge toward each other and meet and thus are "arranged

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in a V-shape" as broadly claimed. The term "V-shape" merely requires the element to be shaped like a "V" rather than being the precise shape of a "V". Even the bar element portions of applicant's invention are not arranged precisely in the shape of a "V" because they are curved while the sides of a "V" are straight. In addition, applicant's specification, in paragraph [50], defines the term "V-shaped" quite broadly as including limbs 4.3''' and 4.4''' which are arcuate. Further, the von Oepen bar element portions meet "in an angle having a V-shape" as claimed since each pair of bar element portions form an angle even though the bar elements are curved. The allegation that the bar element portions of the first annular support portion of von Oepen are not "adapted to extend curvedly in an identical arcuate manner in the longitudinal direction of the stent" as claimed (and apparently argued on page 14 of the response) is incorrect. Viewing an annular support portion in figure 5 of von Oepen, the bar element portions include longer ones and shorter ones. Each of the longer bar element portions is identical to all of the other longer bar element portion within the annular support portion. Each of the shorter bar element portion is identical to all of the other shorter bar element portions within the annular support portion. Thus, the bar element portions extend curvedly in an identical arcuate manner

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as broadly claimed. These positions apply equally well for the Globerman reference.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Thaler whose telephone number is (703) 308-2981. The examiner can normally be reached Monday to Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael J. Milano can be reached on (703)308-2496. The fax phone number for the organization where this application or proceeding is assigned is (703)872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0858.

mht
2/9/04



MICHAEL THALER
PRIMARY EXAMINER
ART UNIT 3731